To: **Honorable David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure**

From: **Honorable Lee H. Rosenthal, Chair, Advisory Committee on Federal Rules of Civil Procedure**

Date: **June 2, 2006 (Revised July 20, 2006)**

Re: **Report of the Civil Rules Advisory Committee**

Introduction

The Civil Rules Advisory Committee met in Washington, D.C., on May 22-23, 2006.

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Part I of this report presents action items. Subpart A recommends approval for adoption of two sets of proposals. . . . The second is the package of Style amendments — [which include] Style-Substance amendments to Rules 4(k), 9(h), 11(a),14(b),16(c), 26(g), 30(b), 31(c), 40, 71.1(d), and 78(a)[.]

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I. Action Items

A. RULES RECOMMENDED FOR ADOPTION

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2. The Style Project

The Committee recommends that the Standing Committee approve for adoption each part of the Style Project. There are four parts: Rules 1-86; the minor, technical changes published on the separate Style-Substance track; the Civil Forms; and style revisions for the rules that were approved and are scheduled to become effective in December 2006, before the effective date of the Style Rules.

The Style Rules 1-86 were published in February 2005, along with the minor technical amendments of several rules.

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Style-Substance Rules

"Style-Substance" Rules 4(k), 9(h), 11(a), 14(b), 16(c), 26(g), 30(b), 31(c), 40, 71.1(d), and 78(a) are recommended for approval for adoption as follows:

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE SEPARATE FROM STYLE REVISION PROJECT*

Rule 4. Summons

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(k) Territorial Limits of Effective Service.

(1) ***In General.*** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

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~~**(C)** who is subject to federal interpleader jurisdiction under 28 U.S.C. § 1335;~~ or

(~~D~~ C) when authorized by a federal statute.

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COMMITTEE NOTE

The former provision describing service on interpleader claimants is deleted as redundant in light of the general provision in (k)(1)(C) recognizing personal jurisdiction authorized by a federal statute.

Rule 9. Pleading Special Matters

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(h) Admiralty or Maritime Claim.

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~~**(2)** ***Amending a Designation.*** Rule 15 governs amending a pleading to add or withdraw a designation.~~

(~~3~~ 2) ***Designation for Appeal.*** A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3).

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* Amendments are proposed to rules as modified by the style revision project.

COMMITTEE NOTE

Rule 15 governs pleading amendments of its own force. The former redundant statement that Rule 15 governs an amendment that adds or withdraws a Rule 9(h) designation as an admiralty or maritime claim is deleted. The elimination of paragraph (2) means that "(3)" will be redesignated as "(2)" in Style Rule 9(h).

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number~~, if any~~. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

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COMMITTEE NOTE

Providing an e-mail address is useful, but does not of itself signify consent to filing or service by e-mail.

Rule 14. Third-Party Practice

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(b) When a Plaintiff May Bring in a Third Party. When a ~~counterclaim~~ claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

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COMMITTEE NOTE

A plaintiff should be on equal footing with the defendant in making third-party claims, whether the claim against the plaintiff is asserted as a counterclaim or as another form of claim. The limit imposed by the former reference to "counterclaim" is deleted.

Rule 16. Pretrial Conferences; Scheduling; Management

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(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) ***Attendance.*** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by ~~telephone~~ other means to consider possible settlement.

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COMMITTEE NOTE

When a party or its representative is not present, it is enough to be reasonably available by any suitable means, whether telephone or other communication device.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

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(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) ***Signature Required; Effect of Signature.*** Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name — or by the party personally, if unrepresented — and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

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(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

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COMMITTEE NOTE

As with the Rule 11 signature on a pleading, written motion, or other paper, disclosure and discovery signatures should include not only a postal address but also a telephone number and electronic-mail address. A signer who lacks one or more of those addresses need not supply a nonexistent item.

Rule 11(b)(2) recognizes that it is legitimate to argue for establishing new law. An argument to establish new law is equally legitimate in conducting discovery.

Rule 30. Depositions by Oral Examination

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(b) Notice of the Deposition; Other Formal Requirements.

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(3) ***Method of Recording.***

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition ~~that was taken nonstenographically~~.

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(6) ***Notice or Subpoena Directed to an Organization.*** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, ~~or~~ a governmental agency, or other entity and describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

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COMMITTEE NOTE

The right to arrange a deposition transcription should be open to any party, regardless of the means of recording and regardless of who noticed the deposition.

"[O]ther entity" is added to the list of organizations that may be named as deponent. The purpose is to ensure that the deposition process can be used to reach information known or reasonably available to an organization no matter what abstract fictive concept is used to describe the organization. Nothing is gained by wrangling over the place to fit into current rule language such entities as limited liability companies, limited partnerships, business trusts, more exotic common-law creations, or forms developed in other countries.

Rule 31. Depositions by Written Questions

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(c) Notice of Completion or Filing.

(1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing.

COMMITTEE NOTE

The party who noticed a deposition on written questions must notify all other parties when the deposition is completed, so that they may make use of the deposition. A deposition is completed when it is recorded and the deponent has either waived or exercised the right of review under Rule 30(e)(1).

Rule 40. Scheduling Cases for Trial

Each court must provide by rule for scheduling trials ~~without request – or on a party's request with notice to the other parties~~. The court must give priority to actions entitled to priority by a federal statute.

COMMITTEE NOTE

The best methods for scheduling trials depend on local conditions. It is useful to ensure that each district adopts an explicit rule for scheduling trials. It is not useful to limit or dictate the provisions of local rules.

Rule 71.1. Condemning Real or Personal Property

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(d) Process.

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(2) ***Contents of the Notice.***

(A) *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

(i) that the action is to condemn property;

(ii) the interest to be taken;

(iii) the authority for the taking;

(iv) the uses for which the property is to be taken;

(v) that the defendant may serve an answer on the plaintiff's attorney within 20 days after being served with the notice; ~~and~~

(vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and

(vii) that a defendant who does not serve an answer may file a notice of appearance.

(B) *Conclusion.* The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney, and an address within the district in which the action is brought where the attorney may be served.

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COMMITTEE NOTE

Rule 71.1(e) allows a defendant to appear without answering. Former form 28 (now form 60) includes information about this right in the Rule 71.1(d)(2) notice. It is useful to confirm this practice in the rule.

The information that identifies the attorney is changed to include telephone number and electronic-mail address, in line with similar amendments to Rules 11(a) and 26(g)(1).

Rule 78. Hearing Motions; ~~Advancing an Action~~ Submission on Briefs

(a) Providing a Regular Schedule for Oral Hearings; ~~Other Orders.~~ A court may establish regular times and places for oral hearings on motions. ~~But at any time or place, on notice that the judge considers reasonable, the judge may issue an order to advance, conduct, and hear an action.~~

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COMMITTEE NOTE

Rule 16 has superseded any need for the provision in former Rule 78 for orders for the advancement, conduct, and hearing of actions.

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CHANGES MADE AFTER PUBLICATION AND COMMENT

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Style-Substance Track

Two rules published on the Style-Substance Track were abandoned.

Rule 8 would have been revised to call for "a demand for the relief sought, which may include ~~relief in the~~ alternative forms or different types of relief." Comments showed that the old-fashioned "relief in the alternative" better describes circumstances in which the pleader is uncertain as to the available forms of relief, or prefers a form of relief that may not be available.

Rule 36 would have been amended to make clear the rule that an admission adopted at a final pretrial conference can be withdrawn or amended only on satisfying the "manifest injustice" standard of Style Rule 16(e). Revisions of Style Rule 16(e) make this clear, avoiding the need to further amend Rule 36.

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